

Memorandum of Understanding

Regarding the Future Program Activities of the Multistate Tax Commission's Litigation Committee

*Alternative Title: Charter of the Multistate Tax Commission Litigation
Committee*

Article 1. Parties (if Commission decides to use an MOU)

The parties to this memorandum of understanding (MOU) are the Multistate Tax Commission (MTC) and the State of _____.

Article II. Litigation Committee Authorization

The MTC Litigation Committee exists by authority of MTC Bylaw 3(d), whereby the Chair of the MTC "appoints such committees as may be necessary."

Article III. Composition, Responsibilities and Activities of the Litigation Committee

Composition

The Litigation Committee is composed of attorneys designated by state revenue departments and state attorney general offices. A state can designate multiple members.

Responsibilities

The Litigation Committee's mission is to foster cooperation and exchange of ideas among attorneys representing states in tax matters. The committee meetings provide a unique forum in which to provide specialized continuing legal education for state tax attorneys. The Committee also advises the Audit and Uniformity committees on legal matters when requested to do so.

Activities

The Litigation Committee meets twice yearly. In addition, the Committee participates in at least four teleconferences each year focusing on particular topics or cases. Those teleconferences are open to all state and local tax attorneys, whether employed by state revenue departments or by the office of the state attorney general responsible for representing the revenue department in tax matters.

Comment [SHL1]: These provisions are taken verbatim from the MTC website "About the Litigation Committee."

Comment [SHL2]: New material

The Litigation Committee's in-person meetings include both open and closed sessions. The open sessions focus on recent U.S. Supreme Court and state appellate decisions pertaining to state taxation and federalism. The majority of the Committee's in-person meeting time is spent in closed Informational and Training Sessions, which include in-depth seminars on substantive tax matters, administrative law, compliance issues, current litigation affecting multiple states and other aspects of developing state tax jurisprudence. The closed sessions also provide an opportunity for state tax attorneys to discuss issues arising in their pending cases and to get expert advice from other state attorneys who have dealt with similar issues.

All activities of the Litigation Committee are subject to the MTC Bylaws, the Commission's Public Participation Policy, applicable state laws and policies regarding the confidentiality of state tax information, the Uniform Exchange of Information Agreement, the attorney/client privilege and the attorney work product rule.

Comment [SHL3]: New material

Article IV. Designation of Committee Members

Each state participating on the Litigation Committee will, at least annually, designate the attorney or attorneys who will represent that state on the committee. The administrator of each state's revenue department, or her designee, shall be responsible for designating any state attorney employed by the revenue department. The state attorney general, or his designee, shall be responsible for designating any state assistant attorney general responsible for representing the revenue department in tax matters.

Article V. Development of Future Program Activities

The Litigation Committee shall from time to time prepare recommendations for consideration by the MTC Executive Committee, as the Litigation Committee believes warrant the Commission's development and implementation of additional Litigation Committee programs or activities. These programs and activities may include, but not be limited to, the creation of an ongoing network of experienced state tax attorneys who are prepared to offer technical assistance and support to other states that are involved in complex state tax litigation. Such network would be subject to all applicable state laws and policies governing the exchange of taxpayer information as well as the attorney/client privilege and the work product doctrine.

States that participate in the Commission as compact, sovereignty and program states (currently, the Nexus and the Audit Program) will fund the future program

activities of the Litigation Committee through their annual dues. Other states, including associate states that do not participate in Commission programs and therefore pay no dues, will pay an annual fee of \$ ---- to fund their participation in these programs.

Article VI. Exchange of Taxpayer Information

The exchange of taxpayer information hereunder is governed by the Uniform Exchange of Information Agreement – Addendum (Supplemental Agreement for Exchange of Information at Multistate Tax Commission Sponsored Government Tax Attorney Meetings), which is attached hereto and incorporated herein by reference.

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Uniform Exchange of Information Agreement - Addendum

Supplemental Agreement for Exchange of Information at Multistate Tax Commission Sponsored Government Tax Attorney Meetings

Article I. Introduction

This Supplemental Agreement (Agreement) is an addendum to the Uniform Exchange of Information Agreement of January 1, 1993 (Uniform Exchange of Information Agreement). It is entered into by and among the signatory agencies through their duly authorized representatives pursuant to the statutes of their respective jurisdictions regarding the exchange of information for tax administration purposes and in accordance with Article VIII of the Uniform Exchange of Information Agreement.

Article II. Purpose

The purpose of this Agreement is to prescribe the nature and operation of information-sharing at Multistate Tax Commission (MTC) sponsored in-person and telephonic meetings of government tax attorneys, whether employed by a state revenue department or by the state attorney general's office responsible for representing the state revenue department in tax matters. The Agreement reflects existing practice, which facilitates compliance and litigation related aspects of state tax administration to the extent each agency has statutory authority to administer its tax laws by exchanging information with other agencies. By exchanging information, agencies are better equipped to enforce state tax laws and litigate issues common to multiple states.

Article III. Authority

Except as provided in Article IX, this Agreement incorporates the Uniform Exchange of Information Agreement, pursuant to the respective authorities of the states and jurisdictions executing the Agreement. In the event of a conflict between this Agreement and the Uniform Exchange of Information Agreement, this Agreement controls.

Article IV. Information Subject to Exchange

1. INFORMATION SUBJECT TO EXCHANGE:

Except as set forth in Section 2 of this Article, this agreement shall apply to any information in the possession of one signatory agency which could reasonably be considered useful to other signatory agencies for the enhancement or facilitation of tax administration, including compliance and litigation. Such information includes, but is not limited to lists of taxpayers or potential taxpayers including identifying data; tax or information returns or documents including supporting schedules, attachments, and lists; nexus information and questionnaires; research and revenue estimating materials; audit reports and other information regarding or acquired through audit; collection and enforcement activities; responses to interrogatories, depositions, and any other documents with respect to private letter ruling requests, protests, appeals and criminal tax matters with respect to any taxpayer, potential taxpayer, or group of taxpayers or potential taxpayers.

2. INFORMATION NOT SUBJECT TO EXCHANGE:

This Agreement does not apply to information received from the Internal Revenue Service pursuant to Section 6103(d) of the Internal Revenue Code, unless the Internal Revenue Service authorizes the exchange. Unauthorized inspection or disclosure of federal returns and other confidential federal return data is a felony (Sections 7213(a)(1) and 7213A(a)(1)(B) Internal Revenue Code).

Any information the disclosure of which would be in violation of, or detrimental to, the administration of the tax laws of any agency is not subject to exchange. Each signatory agency reserves the right to make the determination whether or not information is subject to exchange under the terms of this agreement.

Article V. Duties and Responsibilities

1. The signatory agencies will assist each other through written or oral presentations at in-person and telephonic meetings. Such assistance may include, but is not limited to, the sharing of litigation, audit and compliance techniques, strategies, and procedures and the provision of any information subject to exchange under the terms of this Agreement.

2. The signatory agencies will take appropriate measures to ensure that only government tax attorneys designated by a signatory agency are in attendance at the MTC sponsored in-person and telephonic government tax attorneys' meetings. Such measures may include meeting pre-registration, roll-call, and real-time monitoring of the telephone numbers of those participating in telephonic meetings. Notwithstanding the provisions of this paragraph, a signatory agency may also designate those employees specified herein in Article VII (3) as authorized to attend an MTC sponsored in-person or telephonic governmental tax attorneys' meeting in order to carry out their job responsibilities with reference to the matter or matters under discussion. Such attendance is subject to the same measures to ensure that only those employees specified in Article VII (3) are in attendance as would be applicable to government tax attorneys.

Comment [SHL4]: This is intended to make clear that representatives of the Audit and Uniformity Committees can exchange information through the Litigation Committee as deemed desirable by the Committee from time to time.

3. The signatory agencies will be responsible for storage, transmission and destruction of information related to the MTC sponsored in-person and telephonic meetings in accordance with Article VIII of this Agreement.

Article VI. General Provisions

1. INCORPORATION: This Agreement incorporates the provisions, terms and definitions of the Uniform Exchange of Information Agreement, as it may be amended, with the exceptions of the provisions excluded from this Supplemental Agreement in Article IX herein. Nothing herein shall restrict the exchange of information allowed pursuant to the Uniform Exchange of Information Agreement or any other Supplemental Agreement thereto.

2. **TERM:** This Agreement is effective on the date it is executed by two or more agencies and for additional agencies on their respective date(s) of execution. Duplicate signature pages and faxed signature copies are permitted. This Agreement is binding on signatory agencies, their agents and employees, and their successors in office, unless and until the Agreement is rescinded or modified or until the agency provides written notice of withdrawal. Any unauthorized use or disclosure of information furnished pursuant to the Agreement, or inadequate procedures for safeguarding the confidentiality of such information by a signatory agency constitutes grounds for immediate termination of the agreement as to any, some or all signatory agencies.

3. **AMENDMENTS:** This Agreement may not be amended other than by a writing duly executed by all the signatory agencies.

4. **SEVERABILITY:** In the event any portion or portions of this Agreement should, for any reason, be determined to be invalid or unenforceable, the remaining portions of the Agreement shall continue to be valid and enforceable.

Article VII. Confidentiality

1. Each signatory agency agrees to protect the confidentiality of all information obtained pursuant to this Agreement in accordance with the Agreement and the laws of the receiving agency. No agency shall disclose any information obtained pursuant to this Agreement to any other agency, department or unit within the recipient's state or political subdivision thereof, except as otherwise provided in this Agreement and by the laws of the receiving agency. Further, no information obtained pursuant to the agreement shall be disclosed to officers, employees, or other members of a state legislature, except as required by the laws of the state of the receiving agency for purposes of an audit of the state tax agency or for the purposes of the audit of a refund of tax.

2. The current applicable statutory provisions of the state of each signatory agency as they apply to the exchange of information, and the penalties for unlawful disclosure, are maintained under Article V of the Uniform Exchange of Information Agreement by the primary clearinghouse (the Federation of Tax Administrators) and are incorporated into this agreement by reference.

3. Nothing herein shall be construed so as to prohibit disclosure of any information obtained by virtue of the agreement to the following:

(A) Other employees, agents or authorized representatives of the receiving agency who are charged with tax administration;

(B) A legal representative of the receiving agency for use in administrative, civil or criminal proceedings concerning tax administration purposes;

(C) Other state employees, agents or authorized representatives of the receiving agency to whom such disclosure is necessary in connection with the processing, storage, and transmission of such information;

(D) Other state employees, agents or authorized representatives charged by that state's laws with the responsibility of auditing the activity of the signatory agencies; or

(E) To a duly designated officer of the state audit agency in conjunction with an audit of the state tax agency or for the purposes of the audit of a refund of tax.

4. Nothing in this Agreement, and no exchange of information pursuant to it, waives or in any way alters the governmental, attorney/client, attorney work product, or any other privileges applicable to such information.

5. The signatory agencies are prohibited from disclosing information provided pursuant to this Agreement that would identify a confidential informant or seriously impair any civil or criminal tax investigation or litigation.

Article VIII. Record Keeping and Safeguarding Requirements

1. **INFORMATION SECURITY:** Information security is defined as the preservation of the confidentiality of information. A secure environment is required to protect the confidential information obtained pursuant to this agreement. Any unauthorized disclosures of taxpayer return information obtained under the terms of this agreement will be reported immediately upon discovery to a contact person of the providing agency.

2. **TRANSMISSION OF INFORMATION:** All information exchanged under this Agreement will be transferred between the signatory agencies in the most expedient and secure manner possible as determined by the signatory agencies and in accordance with their laws as specified in Article V of the Uniform Exchange of Information Agreement as maintained by the Federation of Tax Administrators.

3. **DESTRUCTION OF RECORDS:** All records received will be destroyed or returned to the providing agency when they are no longer needed for the purpose for which they were obtained. The records shall be destroyed in a manner reasonably calculated to ensure that the data is no longer usable, readable, or otherwise capable of being ascertained.

Article IX. Exclusions from Supplemental Agreement.

1. The following provisions of the Uniform Exchange of Information Agreement are hereby excluded from, and not incorporated in, this Supplemental Agreement.

- (A) Article IV
- (B) Article V, secs. 1 through 3, inclusive.
- (C) Article VII
- (D) Article VIII
- (E) Article IX

Article X. Definitions

“State” means any one of the territories or states of the United States, a political subdivision thereof, or the District of Columbia.

“Telephonic” includes any electronic means of communication.

Article XI. Ratification

See Attachment A.